

IRAS CIRCULAR

INCOME TAX TREATMENT OF LIMITED LIABILITY PARTNERSHIP (LLPs)



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Revised on 30 June 2009

1. Added the following in paragraphs 6, 10, 32, 38(b):
 - a. last sentence in paragraph 6
 - b. first two sentences in paragraph 10
 - c. second last sentence in paragraph 32
 - d. last sentence in paragraph 38(b)
2. Added footnotes 2, 31 and 34 with other footnotes re-numbered as a consequence
3. Amended footnote 1, the example in paragraph 7 to illustrate the tax treatment of non-trade income from LLP, and paragraph 40 to clarify the circumstances where submission of the contributed capital form is required
4. Deleted the phrase “subject to relevant deduction restriction” in paragraph 32

(Some editorial revisions have also been incorporated in this Circular)

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INTRODUCTION

DPM and Minister for Finance had announced in his Budget Statement 2003 that the Government would introduce two new business vehicles to give businesses more options in structuring their business activities, namely the Limited Partnership¹ ("LP") and Limited Liability Partnership ("LLP") structures.

What is an LLP?

2 The law relating to LLPs in Singapore has been set out in the Limited Liability Partnerships Act ("The LLP Act") which was enacted on 25 January 2005. LLPs will be regarded in law as "bodies corporate" which are formed by being registered under the LLP Act.

3 An LLP is a business structure that allows businesses to operate and function as a partnership while giving it the status of a separate legal person. An LLP will come into existence upon registration with the Registrar of LLPs.

4 This circular provides details on the income tax treatment of LLPs.

TAX TRANSPARENCY

5 Notwithstanding the fact that LLPs will be regarded as bodies corporate, for income tax purposes, an LLP will be treated as a partnership and not as a separate legal entity. This will mean that the income from an LLP will not be chargeable with tax at the entity level. Instead, each partner of an LLP will be chargeable with tax on his or its share of the income from the LLP. Where a partner is an individual, his share of income from the LLP will be taxed based on his personal income rate of tax. Where a partner is a company (hereinafter referred to as "corporate partner"), its share of income from the LLP will be taxed based on the prevailing rate of tax for companies. In addition, each partner's share of (a) capital allowance ("CA") and industrial building allowance ("IBA") in excess of his² income from the LLP, (b) trade

¹ Limited Partnerships are governed by the Limited Partnerships Act (enacted on 18 Nov 2008). The tax treatment of limited partnerships largely mirrors that of Limited Liability Partnerships except in aspects peculiar to the limited partnership structure. These are elaborated in IRAS e-Tax Guide on "Income Tax Treatment of Limited Partnerships" published on 30 June 2009.

² From this point onwards, the term "his" would not be confined to make reference to an individual, but would also be used to refer to a company, as the context requires.

loss from the LLP and (c) donation³ will be available for offset⁴ against his income from other sources.

RESTRICTION OF CA, IBA AND TRADE LOSS AVAILABLE FOR OFFSET AGAINST INCOME FROM OTHER SOURCES

6 The amount of a partner's share of an LLP's CA, IBA and trade loss allowed against his income from other sources (hereinafter referred to as "relevant deduction") for a YA, together with all of his relevant deduction allowed in all past YAs (hereinafter referred to as "past relevant deduction") shall not exceed his contributed capital (see paragraphs 8 to 10 for an explanation of what constitutes contributed capital) as at the end of the basis period relating to that YA. Such a restriction is hereinafter referred to as "relevant deduction restriction". Non-trade income from an LLP is considered income from other sources to partners of the LLP for the purposes of this restriction.

7 Any amount of a partner's share of an LLP's CA, IBA and trade loss which is in excess of his contributed capital may be carried forward to a future YA for offset against his share of income from the same LLP⁵.

Example

Company A is a corporate partner of an LLP and its contributed capital in the LLP as at both 31 December 2006 and 31 December 2007 is \$25,000. Its share of the LLP's CA, IBA and trade loss, and its income from other sources are:

<u>Year ended</u>	<u>CA</u>	<u>IBA</u>	<u>LLP Loss</u>	<u>LLP S'pore Interest</u>	<u>Other income</u>
a) 31 Dec 2006	(\$5,000)	(\$13,000)	(\$3,000)	\$5,000	\$25,000
b) 31 Dec 2007	(\$5,000)	(\$6,000)	(\$8,000)	\$3,000	\$15,000

The relevant deduction restriction applied on Company A is as follows:

³ For the purposes of this circular, the term "donation" refers to donations qualifying for tax deduction under section 37(3) (b) to (f) of the Singapore Income Tax Act ("ITA").

⁴ The offset of capital allowance ("CA"), industrial building allowance ("IBA"), trade loss or donation of a partner of an LLP is to be made in accordance with the order set out in the ITA. The order of setoff applicable to a partner of an LLP is also applicable to any other person (e.g. a sole-proprietor, a company etc) who is subject to income tax in Singapore. Please refer to Annex 1 for a summary of the order of offset for CA, IBA, trade loss and donation.

⁵ Subject to the business continuity test and if applicable, the shareholding test. Please refer to paragraphs 14 and 15 for an explanation of what is the business continuity test and the shareholding test.

	<u>YA2007</u>		<u>YA 2008</u>	
	<u>Tax Comp</u>	<u>Relevant deduction</u>	<u>Tax Comp</u>	<u>Relevant deduction</u>
LLP other income (interest)	\$5,000		\$3,000	
Other income	\$25,000		\$15,000	
Less: CA/IBA	<u>(\$18,000)</u>	\$18,000	<u>*(\$4,000)</u>	\$4,000
	\$12,000		\$14,000	
Less: LLP loss	<u>(\$3,000)</u>	\$3,000	NA	
Chargeable Income	<u>\$9,000</u>		<u>\$14,000</u>	
Unabsorbed LLP CA/IBA c/f			(\$7,000)	
Unabsorbed LLP Loss c/f			(\$8,000)	
Total relevant deduction for each YA		<u>\$21,000#</u>		<u>\$4,000#</u>

*Only \$4,000 relevant deduction is allowable against Company A's income from other sources as its past relevant deduction (i.e. \$21,000) and the relevant deduction for YA 2008 shall not exceed its capital contribution (i.e. \$25,000).

\$21,000 + \$4,000 = \$25,000 (i.e. the same amount as its capital contribution of \$25,000)

CONTRIBUTED CAPITAL

8 The contributed capital of a partner of an LLP is the aggregate of -

- a) The amount which the partner has contributed to the LLP (in cash or in kind⁶ but not including any loan by him to the LLP) as capital, and has not, directly or indirectly, been drawn out or received back by him (whether as a distribution or a loan or otherwise); and
- b) The amount of profits or gains⁷ of the trade, business, profession or vocation derived by the LLP from any past YA to which the partner is entitled (whether as a distribution or a loan or otherwise) but which he has not received.

9 A partner of an LLP may make capital contribution to the LLP in instalments. However, the amount which the partner has agreed to contribute but has not actually contributed to the LLP will not be considered as part of his contributed capital. In other words, for the purposes of applying the relevant deduction restriction, only the amount a partner has actually contributed to the LLP in the form of capital will be recognised.

⁶ To provide businessmen with more flexibility when they set up Limited Liability Partnerships ("LLPs") to conduct their business activities, partners are allowed to contribute in kind, similar to what shareholders of companies or partners of partnerships are allowed today.

⁷ The amount of profits or gains for a YA refers to a partner's share of the amount of accounting profit as shown in the profit and loss account of the LLP for the basis period relating to the YA.

10 Contribution to capital made by a partner of an LLP in forms other than cash must reflect the market value of these non-cash forms and be duly documented in the partnership agreement. Where capital is contributed in the form of services rendered to the LLP, the value of the services to be recognised as contributed capital must be determined based on the open market value of the services when they are rendered. For a contribution in kind made by a partner of an LLP, the partner is required to submit an independent valuation report in respect of the contribution made in kind if the contribution is in the form of:

- a) Real property;
- b) Shares and securities; or
- c) Intellectual property (if the value exceeds \$0.5 million).

Such a report shall be submitted together with his Income Tax Return for the YA relating to the basis period in which the contribution is made. For other types of contribution in kind made by a partner of an LLP, the partner need only to submit a valuation report when required by CIT.

REDUCTION IN CONTRIBUTED CAPITAL OF A PARTNER OF AN LLP

11 The amount of the contributed capital of a partner of an LLP will be reduced if he makes a withdrawal (whether as a distribution or a loan or otherwise) of -

- a) the capital he had previously contributed to the LLP, or
- b) any portion of his share of the profits or gains of the trade, business, profession or vocation derived by the LLP in respect of past years which he had previously not withdrawn.

12 If such a reduction occurs in any YA and it results in the partner's past relevant deduction exceeding his reduced contributed capital as at the end of the basis period relating to the YA, the excess shall be deemed to be income⁸ of the partner chargeable with tax under section 10(1)(g) of the ITA for this YA. Concurrently, an equal amount shall also be deemed to be the partner's share of the loss incurred by the LLP for this YA. Any amount of this deemed trade loss in excess of his share of income from the LLP for this YA can be carried forward to subsequent YAs for offset against his future income from the LLP⁹.

13 The amount which is deemed to be income of the partner chargeable with tax under section 10(1)(g) of the ITA for that YA shall be subtracted from the amount of the partner's past relevant deduction when applying the relevant deduction restriction

⁸This is because the partner's past relevant deduction had exceeded his contributed capital as at the end of the basis period relating to this YA. This excess had been allowed as a deduction against the partner's income from other sources in a prior YA. Therefore, in this YA, the excess is deemed to be income chargeable to tax under section 10(1)(g) of the ITA.

⁹Where the partner is a company, this carry forward of the deemed trade loss is subject to the shareholding test (as explained in paragraph 15 of this circular).

in subsequent YAs. Annex 2 provides two examples showing the offset and restriction of CA, IBA and trade loss of partners of an LLP.

TAX TREATMENT OF UNABSORBED CA, IBA, TRADE LOSS OR DONATION OF A PARTNER OF AN LLP

(A) Current Rules for the Carry Forward of Unabsorbed CA, IBA, Trade Loss and Donation

14 In any YA where full effect cannot be given to a person's CA or IBA due to insufficiency of the person's income chargeable with tax for that YA, the balance of the CA or IBA (hereinafter referred to as "unabsorbed CA or IBA") may be carried forward to the next YA for offset so long as the person continues to carry on the trade, business or profession in respect of which the CA or IBA is granted. In other words, unabsorbed CA or IBA of a YA cannot be carried forward to a subsequent YA if during the basis period relating to the YA, there is a cessation of the trade, business or profession in respect of which the CA or IBA is granted. This requirement¹⁰ for the carry forward of CA and IBA for offset is commonly known as the "business continuity test".

15 For a company to offset its unabsorbed CA, IBA or trade loss¹¹ carried forward in any YA, the shareholders of the company on the last day of the year in which the CA or IBA arose or in which the trade loss was incurred must be substantially the same as the shareholders of the company on the first day of the YA in which such CA, IBA or trade loss is used for offset against the company's income. These requirements¹² for offset of CA, IBA or trade loss carried forward is commonly known as the "shareholding test".

16 Unlike the carry forward of unabsorbed CA and IBA, the carry forward of a person's unabsorbed donation¹³ of a YA to a future YA (up to a maximum of five YAs) for offset against his income is not subject to the satisfaction of the business continuity test. In the case of a company, the carry forward of its unabsorbed donation is subject to the shareholding test.

(B) Tax Treatment of Unabsorbed CA, IBA, Trade Loss and Donation on Transfer of Business to an LLP

¹⁰ stipulated under section 23(1) of the ITA

¹¹ Unabsorbed trade loss of a person is his loss of a trade in excess of all his income from other sources for any YA.

¹² stipulated under sections 23(4) and 37(12) of the ITA

¹³ Unabsorbed donation in respect of a YA is the donation made by a person in a basis period for the YA which exceeds his statutory income for the YA.

17 An LLP may be formed to take over the business¹⁴ of a sole-proprietorship, a partnership (hereinafter referred to as “transferor partnership”), another LLP (hereinafter referred to as “transferor LLP”) or a company. In such a case, the issue of whether unabsorbed CA, IBA, trade loss or donation of the transferred business of the sole-proprietor, each partner of the transferor partnership or the transferor LLP, or the company, as the case may be (hereinafter referred to as “transferor”), can be carried forward to a future YA for offset against his future income will arise. Whether the unabsorbed CA, IBA or trade loss in each case can be carried forward to a future YA for offset depends on whether the business continuity test and/or the shareholding test are/is satisfied.

(a) Unabsorbed CA or IBA

18 For unabsorbed CA or IBA carried forward to be offset, there is a need to satisfy the business continuity test. Therefore, where the trade, business or profession of a transferor is transferred to an LLP, whether the transferor’s unabsorbed CA or IBA of that trade, business or profession that has been transferred can be carried forward to a future YA for offset against his future income will depend on whether he can be considered as continuing to carry on that trade, business or profession after the transfer.

19 For income tax purposes, a change of a business structure through which a person carries on a trade, business or profession does not necessarily constitute a cessation of that trade, business or profession.

Transferor is a sole-proprietor or a partner

20 For a trade, business or profession carried on through a sole-proprietorship or a partnership or an LLP, it is considered as being carried on solely by the sole proprietor or jointly by the partners, as the case may be.

21 Therefore, a transfer of the trade, business or profession of a sole proprietorship, partnership or LLP to an LLP will not result in a cessation of the transferred trade, business, or profession for the transferor if and only if he becomes a partner of the LLP that takes over the trade, business or profession (hereinafter referred to as “transferee LLP”). Where the transferee LLP continues with the trade, business or profession taken over, the transferor can carry forward his unabsorbed CA or IBA of the transferred trade, business or profession remaining in the YA relating to the basis period in which the trade, business or profession was transferred (hereinafter referred to as “YA of transfer”), to a future YA for offset against his income.

22 However, if the transferred trade, business or profession was carried on through a partnership that commenced before 1 January 1969, the transferor will not be able to carry forward his unabsorbed CA or IBA of the transferred trade, business or profession remaining in the YA of transfer even if he becomes a partner of the

¹⁴ The term “business” used in this context would also refer to a trade, profession or vocation.

transferee LLP. This is because he will be deemed to cease to carry on the transferred trade, business or profession by virtue of section 35A(4) of the ITA.

Transferor is a company

23 A company transferring a trade, business or profession to a transferee LLP may dissolve thereafter, or continue to carry on another trade, business or profession after the transfer. For the former, it will cease to exist and therefore, there is no question of carrying forward its unabsorbed CA or IBA of the transferred trade, business or profession, remaining in the YA of transfer to a future YA for offset against its future income.

24 For the latter, if the company becomes a partner of the transferee LLP, the company is considered to continue to carry on the same trade, business or profession and thereby can carry forward its unabsorbed CA or IBA of the transferred trade, business or profession remaining in the YA of transfer to a future YA for offset against its future income, subject to the satisfaction of the shareholding test. On the other hand, if the company does not become a partner of the transferee LLP, the company will be considered to have ceased to carry on that trade, business or profession. The company will therefore not meet the business continuity test and as such, it cannot carry forward its unabsorbed CA or IBA of the transferred trade, business or profession, remaining in the YA of transfer to a future YA for offset against its future income.

(b) Unabsorbed Trade Loss

Transferor is a sole-proprietor or a partner

25 Generally, unabsorbed trade loss of a transferred trade, business, profession or vocation of a sole-proprietor or a partner of a partnership/transferor LLP remaining in the YA of transfer can be carried forward to a future YA for offset against the future income of the sole-proprietor or the partner. This is regardless of whether the sole-proprietor or the partner of the partnership/transferor LLP becomes a partner of the transferee LLP. However, the carry-forward of the unabsorbed trade loss is subject to the shareholding test in the case where the partner is a company.

Transferor is a company

26 Where a company transfers a trade, business or profession to a transferee LLP and dissolves thereafter, there is no question of carrying forward its unabsorbed trade loss of the transferred trade, business or profession remaining in the YA of transfer to a future YA for offset against its future income.

27 On the other hand, for a company that does not dissolve after the transfer, its unabsorbed trade loss of the transferred trade, business or profession remaining in the YA of transfer can be carried forward to a future YA for offset against its future income, subject to the satisfaction of the shareholding test. This is regardless of whether the company becomes a partner of the transferee LLP.

(c) Unabsorbed Donation

28 A transferor can carry forward to a future YA for offset against his future income, any unabsorbed donation¹⁵ of his transferred trade, business, profession or vocation remaining in the YA of transfer, except where the transferor is a company which dissolves after the transfer¹⁶. This is regardless of whether the transferor becomes a partner of the transferee LLP.

(C) Tax Treatment of Unabsorbed CA, IBA, Trade Loss or Donation where there is a Change of Partner(s) of an LLP

29 An LLP may admit new partner(s) or its existing partner(s) may withdraw from the LLP due to retirement, death or other reasons. For income tax purposes, an admission or withdrawal of a partner in an LLP does not necessarily mean that there is a cessation of the trade, business, profession or vocation of all the partners. This is because a trade, business, profession or vocation carried on through the LLP is considered as being carried on jointly by the partners¹⁷. Whether or not there is a cessation of trade, business, profession or vocation for a partner will therefore be dependent on the status of the partner in the situations described in paragraphs 30 to 33 below.

Admission of new partner(s)

30 Where in the basis period relating to a YA, an LLP admits a partner or partners, each existing partner of the LLP will be considered to continue to carry on the same trade, business or profession, unless facts shows that there is indeed a change in the trade, business or profession carried on through the LLP. Since each existing partner of the LLP continues to carry on the same trade, business or profession, the business continuity test would have been satisfied and consequently each existing partner's unabsorbed CA or IBA of the LLP brought forward from a prior YA (if any) can be offset in this YA against first his income from the LLP, and then his income from other sources (subject to the relevant deduction restriction).

31 In addition, regardless of whether there is a cessation of trade, business, profession or vocation arising from the admission of new partners, each existing partner of the LLP may be able to carry forward his unabsorbed trade loss or donation¹⁸ from a prior YA to this YA for offset against first his income from the LLP

¹⁵ A person's unabsorbed donation of a YA can be carried forward for offset to a future YA, up to a maximum of five YAs. For a company that does not dissolve after the transfer, the carry forward of its unabsorbed donation is subject to the satisfaction of the shareholding test.

¹⁶ As the company would cease to exist, there is no question of carrying forward its unabsorbed donation in respect of the transferred trade, business or profession, remaining in the YA of transfer to a future YA for offset against its future income.

¹⁷ section 36 of the ITA

and then his income from other sources. The offset of such unabsorbed trade loss is subject to the relevant deduction restriction. If an existing partner of the LLP is a company, the carry forward of its unabsorbed trade loss or donation is subject to the satisfaction of the shareholding test.

Withdrawal of partner(s) of an LLP

32 Where in a basis period relating to a YA an existing partner withdraws from an LLP, this partner is considered to have ceased to carry on the same trade, business, profession or vocation. Consequently, his unabsorbed CA or IBA of the LLP cannot be carried forward to a subsequent YA in view that the business continuity test is not met. However, his unabsorbed trade loss or donation¹⁹ of the LLP may be carried forward to future YAs for offset against his income from other sources. This applies even where the withdrawing partner becomes a general partner when the LLP is converted to an LP or a general partnership. Where the withdrawing partner is a company, the carry forward of its unabsorbed trade loss or donation of the LLP is subject to the shareholding test.

33 The tax treatment of unabsorbed CA, IBA, trade loss and donation of the remaining partners of the LLP will follow that of partners who continued to be partners of an LLP where there is an admission of new partner(s) to the LLP, as spelt out under paragraphs 30 and 31 above.

TAX TREATMENT OF PROPERTY SOLD

34 For income tax purposes, instances where a sale of a property (i.e. an asset qualifying for CA, or a building qualifying for IBA) is considered to have taken place include instances where -

- a) a sole-proprietor sells his property (which is used in the trade, business or profession carried on through his sole-proprietorship) wholly²⁰ or partly²¹ to other partners of an LLP or a partnership;

¹⁸ A person's unabsorbed donation of a YA can be carried forward for offset to a future YA, up to a maximum of five YAs.

¹⁹ A person's unabsorbed donation of a YA can be carried forward for offset to a future YA, up to a maximum of five YAs.

²⁰ A property used in a trade, business or profession carried on through a sole-proprietorship is sold wholly to the partners of an LLP or a partnership when the property is transferred from the soleproprietor to the LLP or partnership, and the sole-proprietor is not one of the partners of the LLP or partnership.

²¹ A property used in a trade, business or profession carried on through a sole-proprietorship is sold partly to the other partners of an LLP or a partnership when the property is transferred from the sole-proprietor to the LLP or partnership, and the sole-proprietor is one of the partners of the LLP or partnership. This is because, as a partner of the LLP or partnership, he will continue to own part of the property, jointly with the other partners of the LLP or partnership.

- b) a partner of an LLP or a partnership sells his share of a property used in the trade, business or profession carried on through the LLP or partnership, to a sole-proprietor²²;
- c) a partner of an LLP or a partnership sells his share of a property used in the trade, business or profession carried on through the LLP or partnership wholly²³ or partly²⁴ to other partners of another LLP or another partnership;
- d) a partner of an LLP or a partnership sells his share of a property used in the trade, business or profession carried on through the LLP or the partnership wholly²⁵ or partly²⁶ to other partners of the LLP or the partnership;
- e) a company sells its property to the partners of an LLP or a partnership; and
- f) a partner of an LLP or a partnership sells his share of a property used in the trade, business or profession carried on through the LLP or the partnership to a company.

35 Where a property is sold wholly (including a transfer of a property to or from a company), a balancing allowance or charge for the YA relating to the basis period during which the property is sold (hereinafter referred to as the “YA of sale”) will be computed for the seller by virtue of sections 17 and 20 of the ITA²⁷. CA or IBA in respect of this property will be granted to the buyer for the YA relating to the basis period in which the property is purchased (hereinafter referred to as the “YA of purchase”) based on the price paid by him for the property. However, where section

²²Such an instance is where a property used in the trade, business or profession carried on through the LLP or partnership is transferred to a sole-proprietorship, and the partner of the LLP or partnership is not the sole-proprietor. If the partner of the LLP or partnership is the sole-proprietor, there is no sale of his share of the property that is owned by him as a partner, as he would continue to own that share of the property after the transfer (i.e. there is no sale).

²³ A partner’s share of a property used in a trade, business or profession carried on through the LLP or partnership is sold wholly to the partners of another LLP or another partnership when the property is transferred by all the partners (of the LLP or the partnership) to the other LLP or the other partnership, and the partner is not a partner of the other LLP or the other partnership.

²⁴A partner’s share of a property used in a trade, business or profession carried on through the LLP or partnership is sold partly to the other partners of another LLP or another partnership when the property is transferred by all the partners (of the LLP or the partnership) to the other LLP or the other partnership, and the partner is one of the partners of the other LLP or the other partnership, but his share of the property (which he will continue to own) is reduced.

²⁵A share of a property (which is used in a trade, business or profession carried on through the LLP or partnership) of a partner of an LLP or a partnership is transferred wholly to the other partners of the LLP or the partnership respectively, when the partner withdraws from the LLP or the partnership.

²⁶ A partner’s share of a property (which is used in a trade, business or profession carried on through the LLP or partnership) is transferred partly to other partners of the LLP or the partnership when there is a change in the proportion of the share of his ownership of the property [which could arise when there is an admission of one or more new partner(s)].

²⁷ This is because the sole-proprietor, the partner or the company will cease to own the property.

24(3)²⁸ of the ITA is applicable and has been elected, CA or IBA of the property for the YA of purchase will be granted to the buyer based on the tax written down value of the property. No balancing allowance or charge, nor CA or IBA of the property for the YA of sale shall be made to the seller.

36 Where a property is sold partly in the circumstances referred to in paragraph 34 above (i.e. where one party to the sale is a partnership or an LLP, and the other party is an individual or another partnership or LLP), section 24(3) of the ITA shall be deemed elected. Thereby, CA or IBA of the property for the YA of purchase will be granted to the buyer based on the tax written down value of the property. No balancing allowance or charge, nor CA or IBA of the property for the YA of sale shall be granted to the seller.

37 Annex 3 provides some examples that illustrate the treatment of CA in respect of a property sold to partners of an LLP.

OTHER FEATURES OF THE INCOME TAX TREATMENT FOR LLPs

38 The other features of the income tax treatment for LLPs are as follows:

a) Applicability of Section 10E Provisions to an LLP

The tax treatment of section 10E²⁹ of the ITA is applicable if the partners of an LLP carry on a business of the making of investments. The example in Annex 4 illustrates the tax treatment of the partners of an LLP where section 10E is applicable.

²⁸ Under section 24(3) of the ITA, a buyer and a seller under common control can elect to have the actual price (at which a property is transferred between them) to be substituted by the remaining tax written down value in respect of that property. Upon such election, the buyer is not given any initial allowance in respect of the property transferred but will be entitled to annual allowances based on the remaining tax written down value, and no balancing allowance or charge is made on the seller at the time of transfer

²⁹ Where section 10E tax treatment applies to an LLP, a partner's share of investment income of the LLP is taxed under section 10(1)(a) as he is carrying on a business in respect of those investments. However, deduction of expenses and outgoings, and claims for CA are restricted by the provisions of section 10E. Under section 10E, in determining the LLP income from any business of making investments (including the letting of immovable properties):

- a) any outgoings and expenses in respect of investments which do not produce any income is not allowed a deduction under section 14 for that business or other income of the partner;
- b) any outgoings and expenses which qualify for deduction under section 14 can only be deducted against the income derived from the investments and not against other income.
Any excess cannot be carried forward;
- c) CA under sections 19, 19A, 20 and 21 (for plant and machinery) can only be deducted against the income derived from the investments and not against other income. Any unabsorbed CA cannot be carried forward. This limitation does not apply to IBA under section 16.

Please refer to Income Tax Practice Note 24 of Vol. 4 No. 1, Practice Note 26 of Vol. 5 No. 1 and Practice Note 28 of Vol. 5 No. 2 (or our e-Tax Guides 1996/IT/2, 1997/IT/3 and 1997/IT/5) for more details on the application of the provisions of section 10E.

b) Assignment of Economic Interests

If a partner of an LLP assigns his economic interest to another person and he remains a partner of the LLP thereafter, he is liable to tax on his share of the income of the LLP despite the assignment. The assignment of the economic interest in an LLP shall not be construed as a transfer of his partnership status to the assignee. Whether any sum received by the assignee pursuant to the arrangement is taxable to him will, however, depend on the circumstances under which the assignment was made³⁰.

c) LLP in Liquidation

When an LLP is being wound up, the income of the LLP will continue to be assessed on the partners³¹. The liquidator of the LLP shall be responsible for compliance with the provisions of the ITA in relation to the affairs of the LLP under liquidation.

d) Foreign LLPs

For Singapore tax purposes, the tax treatment applicable to foreign LLPs³² deriving income from Singapore will be the same as that of LLPs registered under the LLP Act.

ADMINISTRATIVE MATTERS

(A) Appointment of Manager

39 Under the LLP Act, any person who is concerned with or takes part in the management of the LLP is the manager of the LLP (hereinafter referred to as “LLP manager”). For income tax purposes, the LLP manager shall be deemed to be the precedent partner for the purpose of sections 62 (relating to notice of chargeability and income tax returns) and 71 (regarding matters relating to returns to be made by a partnership) of the ITA.

40 The LLP manager will be required to make and deliver a return of the income of the LLP for every YA. In addition, where the LLP has a incurred business loss, the LLP manager will be required to submit a Capital Contribution Form³³ with its tax return for the year of assessment in which the loss is incurred, and all subsequent

³⁰ For example, if the assignment was made in return for a service to be rendered by the assignee, then the amount of the assigned LLP income received by the assignee would be taxable as service income of the assignee.

³¹ This is unlike UK tax treatment. In UK, where an LLP ceases to carry on a trade or profession then it will no longer be regarded as a “partnership” for the purposes of taxation provisions and will instead be regarded as a “body corporate”. [Source – Page 801 of Tax Bulletin, December 2000].

³² Foreign LLPs are LLPs which are incorporated or registered under any law elsewhere that is similar to the Singapore LLP Act.

³³ The Capital Contribution Form is downloadable from IRAS’s website.

years of assessments whether or not it makes a profit or loss. This is for the purposes of applying the relevant deduction restriction.

(B) Filing of Return and Accounts

41 The filing requirement³⁴ for LLPs will be:

a) LLPs with turnover of less than S\$500,000

Such LLPs need not submit financial statements of the LLP when filing their income tax returns. The following details need to be declared in their income tax returns:

- i) Amount of turnover;
- ii) Gross profit;
- iii) Allowable business expenses; and
- iv) Adjusted profit/loss.

b) LLPs with turnover of S\$500,000 or more

Such LLPs are required to submit to the CIT financial statements certified true and correct by the LLP manager.

42 Similar to partnerships and all other business structures, LLPs will be required to maintain proper books of account and records of their trade, business, profession or vocation.

(C) Certification of Tax Residence status of LLPs

43 As an LLP will be treated as a partnership, and not a separate legal person for income tax purposes, the income of an LLP will be chargeable with tax in the hands of the partners of the LLP, and not the LLP itself. Therefore, CIT will not issue a certification of the tax residence status of an LLP for the purposes of an Agreement for the Avoidance of Double Taxation between Singapore and another country. However, CIT may, upon request by any partner of an LLP who is a tax resident of Singapore, issue a certificate of his tax residence status for this purpose.

ENQUIRIES

44 For any enquiries or clarification on this circular, please call 1800-3568611 (Individual) or 1800-3568622 (Corporate).

Inland Revenue Authority of Singapore

³⁴ This filing procedure is currently applicable to partnerships.

ORDER OF OFFSET for CA, IBA, TRADE LOSS and DONATION

Annex 1

The manner of offsetting CA, IBA, trade loss and donation (subject to the business continuity test and/or the shareholding test, where applicable) is spelt out in the ITA in the following order:

(A) Offsetting of CA and IBA: s. 16 - 23

- i) Both current and unabsorbed CA and IBA brought forward from prior YAs of a trade, business or profession * shall first be offset against income of the same trade, business or profession.
- ii) The CA and IBA in respect of earlier YA shall be deducted first.

*Where for a year of assessment (“YA”) a taxpayer has a single trade source and has common assets that are used to produce income that is exempt from tax as well as income chargeable with tax, the CA and IBA of such assets for the YA shall be made against the income exempt from tax and the income chargeable with tax in such proportion as appears reasonable to the CIT in the circumstances. The basis to be used for apportioning such CA and IBA will generally be the same basis as that for the allocation of common expenses to the different tax categories.



(B) Aggregation of income from separate sources: s. 35(Statutory Income Stage)



(C) Offsetting of CA and IBA against income from other sources: s 35(2)

- i) Any excess CA and IBA of a trade, business or profession shall be aggregated with any excess CA and IBA of other trade, business or profession.
- ii) The aggregated amount shall then be offset proportionately against income of other trade business or profession (where such income of a trade, business or profession shall be net of CA and IBA of that trade, business or profession). The CA and IBA in respect of earlier YA shall be deducted first.
- iii) Any balance of the excess CA and IBA [as determined under (C)(ii)] shall then be offset proportionately against the taxpayer’s income from other sources. The CA and IBA of earlier YA shall be deducted first.
- iv) Any remaining of the excess CA and IBA [as determined under (C)(iii)] can, subject to satisfying the necessary conditions, be transferred as Group Relief under s 36C, or transfer to spouses under s37D or carried backward under s37E /s37F.
- v) Any remaining of the excess CA and IBA [as determined under (C)(iv)] shall be carried forward to a future YA for offset against future income.



(D) Deduction of trade loss and donation: s.37 (Assessable Income Stage)

- i) Any unabsorbed trade loss brought forward from prior YAs of a trade, business, profession or vocation shall be offset against profits of the same trade, business, or profession or vocation. The trade of earlier YA shall be deducted first.
- ii) Any excess unabsorbed trade loss [as determined under (D)(i)] shall be aggregated with:
 - Any excess unabsorbed trade loss of other trade, business, profession or vocation; and
 - Any current year trade loss of other trade, business, profession or vocation.
- iii) The aggregated amount shall be offset proportionately against income of other trade, business, profession or vocation (where such income of a trade, business, profession or vocation shall be net of CA, IBA and unabsorbed trade loss of that trade, business, profession or vocation). The trade loss of earlier YA are to be deducted first.
- iv) Any balance of the excess unabsorbed trade loss [as determined under (D)(iii)] shall be offset proportionately against the taxpayer’s income from other sources. The trade loss of earlier YA shall be deducted first. Any remaining trade loss shall be carried forward to a future YA for offset against future income.
- v) Unabsorbed donation carried forward from the prior YA and the current year donation shall be deducted proportionately against income remaining after (D)(iv)[if any]. The donation in respect of earlier YA shall be deducted first. Any remaining donation shall be carried forward to a future YA for offset against future income.

ANNEX 2

ILLUSTRATION OF SET-OFF AND RESTRICTION OF CA, IBA AND TRADE LOSS OF PARTNERS OF AN LLP

Partnership A is an LLP and has two partners (i.e. Mr Thomas and Ms Sharon). The principal business of the LLP is the marketing of micro-chips, and the business' accounting year end is 31 December. The details of the LLP for YA 2006, 2007 and 2008 are:

	Mr Thomas (Example 1)			Ms Sharon (Example 2)		
(A) Profit sharing ratio	60%			40%		
(B) Contributed capital as at:						
a) 31 Dec 2005	\$50,000			\$40,000		
b) 31 Dec 2006	\$50,000			\$30,000		
c) 31 Dec 2007	\$80,000			\$25,000		
(C) Adjusted profit/loss of LLP for y/e:						
a) 31.12.2005 - Loss \$9,000	(\$5,400)			(\$3,600)		
b) 31.12.2006 - Loss \$5,000	(\$3,000)			(\$2,000)		
c) 31.12.2007 - Profit \$30,000	\$18,000			\$12,000		
(D) CA/IBA for:						
a) YA 2006 - \$40,000	\$24,000			\$16,000		
b) YA 2007 - \$40,000	\$24,000			\$16,000		
c) YA 2008 - \$40,000	\$24,000			\$16,000		
(E) CA/IBA & losses - Cumulative	YA2006	YA2007	YA2008	YA2006	YA2007	YA2008
	\$29,400	\$56,400	\$80,400	\$19,600	\$37,600	\$53,600
(F) Contributed capital as at end of basis period	\$50,000	\$50,000	\$80,000	\$40,000	\$30,000	\$25,000
(G) Excess of cumulative CA/IBA and losses over contributed capital [(E)-(F)]	0	6,400	\$20,400	0	\$7,600	\$28,600
(H) Past relevant deduction	CA/IBA -\$24,000 Loss - \$ 5,400 <u>\$29,400</u>	CA/IBA -\$44,600 Loss - \$ 5,400 <u>\$50,000</u>	CA/IBA -\$54,000 Loss - \$ 8,000 <u>\$80,000</u>	CA/IBA - \$16,000 Loss - \$ 3,600 <u>\$19,600</u>	CA/IBA - \$26,400 Loss - \$ 3,600 <u>\$30,000</u>	CA/IBA - \$26,400 Loss - \$ 3,800 <u>\$30,000</u> Less Deem inc \$ 5,000 <u>\$25,000</u>

As the contributed capital as at 31.12.2007 is lower than the past relevant deduction, the difference of \$5,000 will be deemed as income chargeable with tax under section 10(1)(g) of the ITA

ANNEX 2 (CONTINUED)

Example 1 - Tax Computations for Mr Thomas for YAs 2006, 2007 and 2008:

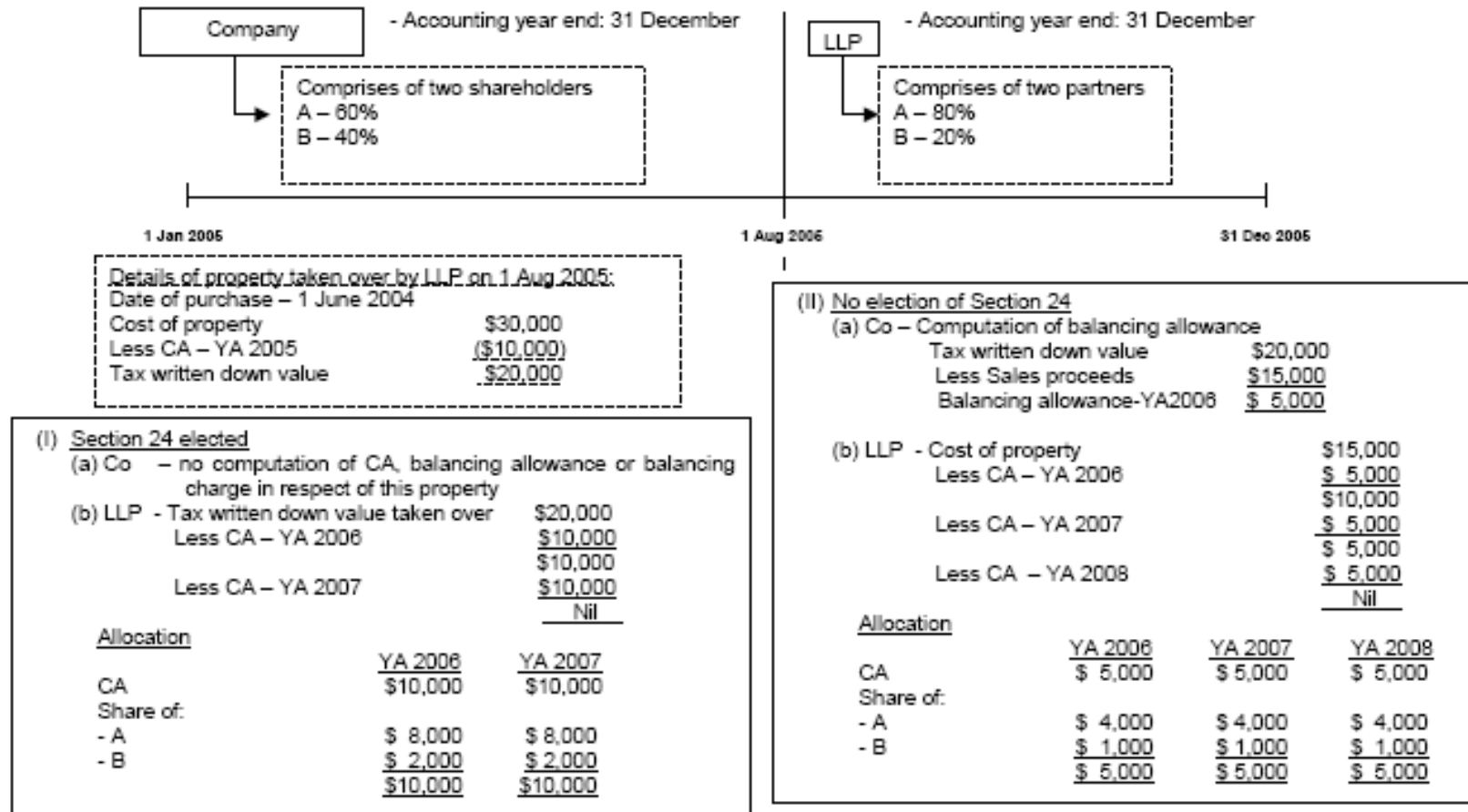
	YA 2006			YA 2007			YA 2008		
	\$	\$	\$ Restrict	\$	\$	\$ Restrict	\$	\$	\$ Restrict
Trade Income									
- LLP		0			0		18,000		
Less: CA/IBA b/f		0			0		(3,400)		
Current capital allowance		(24,000)			(20,800)	(3,400)	(24,000)	(9,400)	
- Partnership	20,000			30,000			12,000		
Less: CA/IBA	(5,000)	15,000		(9,000)	21,000		(8,000)	4,000	
- Sole-proprietorship	8,000			24,000			15,000		
Less: CA/IBA	(30,000)	(22,000)		(9,000)	15,000		(11,000)	4,000	
		(31,000)			15,400			(1,400)	
Rental Income		100,000			98,000			87,000	
		89,000			113,400			85,800	
Less: LLP loss b/f								(800)	(2,400)
Less: LLP current loss		(5,400)			0	(3,000)		0	
Assessable Income		83,600			113,400			85,000	
Less: <u>Personal Relief</u>									
- Earned Income	1,000			1,000			1,000		
- Wife	2,000			2,000			2,000		
- Child	2,000	5,000		2,000	5,000		2,000	5,000	
Chargeable Income		58,600			108,400			80,000	
Tax payable		2,874			8,880			4,800	
Cumulative LLP CA/IBA & losses		(29,400)			(58,400)			(80,400)	
Less: Set off against LLP profit		0			0			18,000	
Set off against other sources		29,400			50,000			80,000	
LLP CA/IBA & losses c/f									
- CA/IBA for YA2007	0			3,400			0		
- CA/IBA for YA2008	0			0			0		
- loss for y/e 31.12.2005	0			0			0		
- loss for y/e 31.12.2006	0	0	0	3,000	(6,400)	(6,400)	2,400	(2,400)	(2,400)

ANNEX 2 (CONTINUED)

Example 2 - Tax Computations for Ms Sharon for YAs 2006, 2007 and 2008:

	YA 2006			YA 2007			YA 2008		
	\$	\$	\$ Restrict	\$	\$	\$ Restrict	\$	\$	\$ Restrict
Trade Income									
- LLP		0			0		7,000		
Less: CA/IBA b/f		0			0		(5,600)		
Current CA/IBA		(16,000)			(10,400)	(5,600)	(16,000)		(14,600)
- Sole-proprietorship	12,000			8,000			5,000		
Less: CA/IBA	(5,000)	7,000		(9,000)	(1,000)		(1,000)	4,000	
		(9,000)			(11,400)				
Employment income		50,000			60,000			65,000	
Rental Income		8,000			8,000			7,000	
Deemed income		0			0			5,000	
		49,000			58,600			81,000	
Less: LLP loss b/f		0			0			0	(2,000)
Less: LLP current loss		(3,600)			0	(2,000)		0	
		45,400			58,600			81,000	
Less: Donation		1,200			1,200			1,200	
Assessable Income		44,200			55,400			79,800	
Less: Personal Relief									
- Earned Income	1,000			1,000			1,000		
- CPF	10,000	11,000		12,000	13,000		13,000	14,000	
Chargeable Income		33,200			42,400			65,800	
Tax payable		592			1,216			3,322	
Cumulative LLP CA/IBA & losses		(19,600)			(37,600)			(53,600)	
Less: Set off against LLP profit		0			0			12,000	
Set off against other sources		19,600			30,000			25,000	
LLP CA/IBA & losses c/f									
- CA/IBA for YA2007	0			(5,600)			0		
- CA/IBA for YA2008	0			0			(14,600)		
- loss for y/e 31.12.2005	0			0			0		
- loss for y/e 31.12.2006	0	0	0	(2,000)	(7,600)	(7,600)	(2,000)	(16,600)	(16,600)

TREATMENT OF CA IN RESPECT OF A PROPERTY SOLD TO PARTNERS OF AN LLP (Continued)
EXAMPLE 3 : WHERE A COMPANY'S PROPERTY IS TRANSFERRED TO AN LLP



EXAMPLE SHOWING TAX TREATMENT OF PARTNERS OF AN LLP WHERE SECTION 10E IS APPLICABLE

Partnership B is an LLP and has two partners (i.e. Goodrich Pte Ltd and Mr Brodrick). The LLP is in the business of making investments and has an accounting year end of 31 December. The details of the LLP for YA 2006 and 2007 are:

	Goodrich Pte Ltd	Mr Brodrick
(A) Profit sharing ratio	90%	10%
(B) Contributed capital as at 31 Dec 2005	\$500,000	\$2,000*
(C) Net rental income for y/e 31.12.2005 - \$30,000	\$27,000	\$3,000
Net rental income for y/e 31.12.2006 - \$70,000	\$63,000	\$7,000
(D) CA for YA 2006 - \$40,000	(\$36,000)	(\$4,000)
CA for YA 2007 - \$40,000	(\$36,000)	(\$4,000)
(E) IBA for YA 2007 - \$60,000 (no claim for YA 2006)	(\$54,000)	(\$6,000)

*This is his actual capital contribution. Mr Brodrick has committed to contribute up to \$50,000 as capital contribution by year ended 31.12.2009.

YA 2006 Tax Computation for Goodrich Pte Ltd and Mr Brodrick:

	Goodrich Pte Ltd		Mr Brodrick	
	\$	\$	\$	\$
<u>Trade Income</u>				
- Adjusted trade income of Goodrich P L's operation	20,000			
Less: CA	(50,000)	(30,000)		0
- Net income from LLP	27,000		3,000	
Less: CA	** (36,000)	0	** (4,000)	0
Employment income		0		60,000
Rental Income		145,000		0
		115,000		60,000
Less: <u>Personal Relief</u>				
- Earned Income			1,000	
- CPF		NA	12,000	13,000
Chargeable Income before deducting exempt amount		115,000		47,000
Less: exempt amount		52,500		NA
Chargeable Income after deducting exempt amount		62,500		47,000
Tax payable		12,500		1,630

**The excess CA is not available for set-off against income from other sources as section 10E tax treatment is applicable. Neither can the excess CA be carried forward to a future YA for set-off against the partner's share of future income from the LLP.

ANNEX 4 (CONTINUED)

YA 2007 Tax Computation for Goodrich Pte Ltd and Mr Brodrick:

	Goodrich Pte Ltd			Mr Brodrick		
	\$	\$	\$ Restrict	\$	\$	\$ Restrict
<u>Trade Income</u>						
- Adjusted trade income of Goodrich P L's operation	75,000					
Less: CA	(50,000)	25,000			0	
- Net income from LLP	63,000			7,000		
Less: CA	(36,000)			(4,000)		
	27,000			3,000		
IBA	(54,000)	(27,000)		(6,000)	(2,000)	(1,000)
- Partnership	30,000			50,000		
Less: CA	(40,000)	(10,000)		(12,000)	38,000	
		(12,000)			38,000	
Employment income		0			80,000	
Rental Income		125,000			0	
		113,000			116,000	
Less: <u>Personal Relief</u>						
- Earned Income				1,000		
- Wife				2,000		
- Child				2,000		
- CPF		NA		16,000	21,000	
Chargeable income before deducting exempt amount		113,000			95,000	
Less: exempt amount		52,500			NA	
Chargeable Income after deducting exempt amount		60,500			95,000	
Tax payable		12,100			6,850	